Saginaw General Hospital *and* United Food and Commercial Workers Union Local 876, United Food and Commercial Workers Union, AFL–CIO–CLC. Case 7–CA–36756

January 31, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On September 6, 1995, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party filed answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Saginaw General Hospital, Saginaw, Michigan, its officers, agents, successors, and assigns, shall take the actions set forth in the Order.

[1] We agree with the judge's conclusion that the Union needed on-call employee Daniel Tribble's complete personnel file to compare his qualifications with those of employee Steve Gaertner in order to decide whether to pursue arbitration, and as a source of evidence on this issue at the arbitration itself. The judge further found, however, that the Union also needed Tribble's personnel file to determine whether he was a bargaining unit employee when he applied for the job at issue. The Respondent has always acknowledged that Tribble was a nonbargaining unit employee, and we accordingly find it unnecessary to rely on the latter finding in order to adopt the judge's conclusion that the Respondent violated Sec. 8(a)(5) by refusing to furnish the requested information.

Andre Mays, Esq., for the General Counsel.
Lisa M. Smith, Esq. (Klimist, McKnight, Sale, McClow & Canzano, P.C.), of Southfield, Michigan, for the Charging Party.
Carolyn Pollock Cary and *Robert Kendrick, Esqs. (Braun, Kendrick, Finkbeiner, P.L.C.)*, of Saginaw, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Saginaw, Michigan, on June 14, 1995. The charge was filed January 19, 1995,[1] and the complaint was issued March 31, 1995. The complaint, as amended at the hearing, alleges that the Respondent, Saginaw General Hospital (the Hospital), since about August 18 has violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act), by failing and refusing to supply the Charging Party, United Food and Commercial Workers Union Local No. 876, United Food and Commercial Workers International Union, AFL–CIO–CLC (the Union), with the complete personnel record of Dan Tribble and any records, including notes, minutes or otherwise, pertaining to the interview information and knowledge of Tribble's work experience, relied on by the Hospital in awarding the position of general repair to him, and thus deprived the Union of information necessary for, and relevant to, its collective-bargaining function. The Hospital filed a timely answer, denying that it had engaged in the alleged unfair labor practice.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party, and the Hospital, respectively, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Hospital, a corporation, operates an acute care hospital and offers related medical services at its facility in Saginaw, Michigan, where it annually derives gross revenue exceeding $500,000 from its operations and, where, in the course and conduct of its operations, the Hospital purchased and received from points outside the State of Michigan, health products and other supplies valued in excess of $50,000, which were transported and delivered to its Saginaw, Michigan facility directly from points outside the State of Michigan. The Hospital admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and further admits that it is a health care institution within the meaning of Section 2(14) of the Act. The Hospital admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

On August 30, 1991, the Board certified the Union as the exclusive collective-bargaining representative of the follow unit of the Hospital's employees:

> All full-time and regular part-time skilled maintenance employees, including maintenance mechanics, electricians, refrigeration/plumbing employees, boiler operators, painters, HVAC technicians, cabinet makers, mechanical repair technicians, bio-medical technicians, and grounds maintenance employees employed by the Hospital at 1447 North Harrison Street, Saginaw, MI and at 5400 Mackinaw, Saginaw, MI; but excluding all office clerical employees, guards, and supervisors as defined in the Act, and all other employees.

Since that date, the Hospital has recognized the Union as such representative. Such recognition is embodied in article I of the collective-bargaining agreement between the Hospital and the Union, which covered the unit described above, effective from June 7, 1992, through June 9, 1995. The parties

[1] All dates are in 1994 unless otherwise indicated.

have extended the contract's term pending ratification of a new agreement.

Two provisions of the parties' contract are pertinent here. Article IX, section 3, entitled ''Job Posting and Bidding'' provides

> (a) Job category openings shall first be filled through the recall of any employees in that job category who are on layoff pursuant to the recall provisions of this Agreement.
>
> (b) If there are no employees on layoff from that job category and subject to recall the opening will be posted on the department bulletin board for a minimum of three (3) calendar days. All bargaining unit employees will be entitled to bid including any laid off employees. Any such job opening may be filled temporarily by the Employer until there has been a permanent award of the job to an employee. The Employer shall have sole discretion to determine whether any particular bargaining unit member who has bid for the job opening is qualified. If there are two (2) or more qualified bargaining unit employees who have bid, the job opening will be awarded based on the factors of the training, ability, skill, knowledge, education, and overall work record (to include attendance and tardiness) of the applicants and, if those factors are equal, the bargaining unit employee with the greatest seniority will be awarded the job category opening.
>
> If there are [no][2] present bargaining unit employee applicants who are qualified, the Employer shall give first consideration to any on-call employees before filling the position through non-bargaining unit employees or outside applicants.

The second contract provision involved in this case is article VI. This article spells out the parties' grievance and arbitration process. Employee grievances are handled in a four-step process which culminates in arbitration.

In May, the Hospital had a vacancy in the unit position of ''general repair.'' Only employees Steve Gaertner and Dan Tribble applied for the vacancy. Gaertner was a laid off bargaining unit employee. Tribble, an on-call employee, was not a member of the bargaining unit. The Hospital decided that Gaertner was not qualified for the unit position and selected Tribble to fill the vacancy.

On May 20, Gaertner filed a grievance alleging:

> The Employer is in violation of Article IX section 3 (b) of the collective bargaining agreement. A non-bargaining unit person was chosen to fill a bid postion over a qualified bargaining unit [employee] who is currently on layoff.

Gaertner's grievance demanded that the Hospital award that position to the grievant and make him whole.

The Union processed Gaertner's grievance through the steps leading to arbitration. At each meeting, the Union insisted that Gaertner was qualified and should have filled the vacancy. The Hospital's representatives insisted that Gaertner had not substantiated his qualifications. On August 2, the Union demanded arbitration of the dispute.

By letter dated August 18, the Union, by its attorney, asked that the Hospital ''promptly provide . . . the following records and information, which are necessary so that the Union may adequately prepare for the upcoming arbitration in this matter:

> 1. All personnel records of Saginaw General Hospital relating to Steve Gaertner and to Dan Tribble.
>
> 2. Any and all policies and procedures, work rules, or other documents of Saginaw General Hospital upon which the employer relied in connection with filling the position of ''General Repair,'' the subject of this grievance.''

On August 31, the Hospital responded to the Union's request. The cover letter to the Union announced the following enclosures:

> 1. Personnel record of Steve Gaertner.
>
> 2. Relevant information from personnel record of Dan Tribble.
>
> 3. Copy of bidding procedure from UFCW contract and a copy of the job description.

The Hospital's response also disclosed that in addition to the listed documents, it used ''interview information'' and ''knowledge of employee's work experience.''

The Hospital gave a copy of Gaertner's entire personnel file to the Union. However, the Hospital did not provide Tribble's personnel file to the Union. Instead, Mary Beth Ciesla, the Hospital's director of human resources, decided what was relevant. Ciesla attached the following documents to the Hospital's cover letter: two 1-year certificates of license from the City of Saginaw, showing that Tribble was a stationary engineer, a transcript and certificates from Delta College, showing that Tribble had completed courses in stationary boiler operations; and, a certificate showing that Tribble had completed a course in home electrical wiring.

At the time of the Union's request for information, in August, Ciesla had Tribble's entire personnel file in her office, at the Hospital. Tribble's file included information regarding his prior job classifications, his prior evaluations, and his work experience.

By letter, dated January 3, 1995, the Union renewed its earlier request for Tribble's complete personnel file and made further demand for:

> any records, including notes, minutes or otherwise, pertaining to the ''interview information'' and ''knowledge of employee's work experience'' which Ms. Ciesla says she relied on for ''the decision.''

In the same letter, the Union asserted that it needed the requested information to prepare for the arbitration of the pending grievance, scheduled for January 24, 1995.

The response to the Union's second request came in a letter dated January 4, 1995. The Hospital asserted that it had provided the Union with ''the Grievant's personnel record as well as relevant work and educational background of Mr. Tribble.'' The letter went on to contend that the Union's de-

[2] The testimony of the Hospital's director of human resources, Mary Beth Ciesla shows that the word ''no'' was inadvertently omitted from this provision of the current collective-bargaining agreement covering the Hospital's employees.

mand for information was too broad, stating: '' Your most recent request for information appears to be an attempt at discovery, normally required of the parties in a lawsuit, but not in arbitration.'' The Hospital's letter concluded with the following: ''Nevertheless, if you are willing to provide us all 'records, notes, minutes or otherwise' of the Grievant's meeting with union officials, grievance meetings, etc. we would consider such an exchange.''

By letter dated January 18, 1995, the Union advised the Hospital that it was seeking an adjournment of the scheduled arbitration hearing on Gaertner's grievance, and renewed its request for ''Dan Tribble's complete personnel record'' The same letter also asked for: ''Documents, notes, minutes or other information pertaining to the 'interview information' and 'knowledge of employee's work experience' for both applicants.' On the following day, the Union filed an unfair labor practice charge alleging that the Hospital had violated Section 8(a)(5) and (1) of the Act by its refusal to provide the Union with ''relevant and necessary information regarding the grievance of Stephen Gaertner.''

The Union repeated its request by letter dated May 31, 1995. The Hospital responded to this request by letter dated June 5, 1995. With respect to Tribble's personnel record, the Hospital agreed to bring it to the pending arbitration hearing on Gaertner's grievance, and make it available to the Union at the hearing, if the arbitrator ruled that it must do so. Otherwise, the Hospital held to its position that Tribble's personnel record was irrelevant to the pending arbitration. The Hospital also declared that it had no documents, notes or minutes, as requested by the Union. The letter concluded with the Hospital's request that the Union provide the Hospital with documents, notes, or minutes. The record shows no further correspondence between the Union and the Hospital. To date, the Hospital has not provided Tribble's personnel record to the Union. The arbitrator postponed the arbitration hearing until September 15, 1995.

Lisa M. Smith, Esq., an associate in the law firm representing the Union in the arbitration arising from Gaertner's grievance, credibly testified before me that Tribble's personnel file is necessary to enable the Union to evaluate and prepare its case in that proceeding. In explaining the importance of Tribble's personnel file, Smith testified that part of this preparation ''is comparing work experience and comparing the personnel files of the two employees involved.'' She also pointed out that in its response to the Union's initial request for personnel files and other information, the Hospital asserted that in awarding the general repair job to Tribble, it had relied on ''knowledge of employee's work experience.'' Smith did not testify as to the relevance of the documents, notes, minutes, or other information requested by the Union.

Gaertner's personnel file, which the Hospital provided to the Union, reflected his work experience, including his prior classifications, performance appraisals, and other documents peraining to employment at the Hospital. In testimony before me, Mary Beth Ciesla, the Hospital's director of human resources admitted that Tribble's personnel file, maintained by the Hospital, would contain similar information covering his experience as a Hospital employee.

B. *Analysis and Conclusions*

Under Section 8(a)(5) and (1) of the Act, the Hospital's duty to bargain in good faith with the Union included the duty ''to provide information that is needed by the bargaining representative for the proper performance of its duties.'' *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435–436 (1967). ''[T]he grievance arbitration procedure forms an integral part of the collective bargaining process.'' *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). Consequently, the Board has recognized that the Act, in furtherance of that process, requires an employer to provide a union with requested information which is ''necessary for processing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration.'' *Bohemia, Inc*., 272 NLRB 1128, 1129 (1984). Accord: *NLRB v. Rockwell-Standard Corp*., 410 F.2d 953, 957 (6th Cir. 1969). The standard of relevancy is a liberal ''discovery-type standard.'' *NLRB v. Acme Industrial Co*., 385 U.S. at 437 and fn. 6. Accord: *Bell Telephone Laboratories*, 317 NLRB 802 (1995).[3] Here, as the Union's request was, and continues to be, for information concerning an employee, who, at the time he applied for the disputed job, was employed outside the bargaining unit, the Union must show '' the probability that the desired information was relevant and that it would be of use to the [U]nion in carrying out its statutory duties and responsibilities'' with regard to Gaertner's grievance. *Acme Industrial Co*., supra at 437.

Applying these principles, I find that the Union's letters requested information relevant to Gaertner's grievance. The Union has shown its need for Tribble's personnel file to establish whether he was a bargaining unit employee when he was selected for the job, and to compare his qualifications with Gaertner's and decide first whether the expense of arbitration was warranted. Having concluded that Gaertner's grievance merited arbitration, the Union would have need of Tribble's personnel file as a source of evidence to show that he was either less qualified, or no more qualified, than the grievant, and that the Hospital had abused its discretion in violation of the collective-bargaining agreement. Accordingly, I find that the Hospital has violated Section 8(a)(5) and (1) of the Act by its refusal to furnish the Union with Tribble's personnel file. *Arch of West Virginia*, 304 NLRB 1089, 1093 (1991).[4]

CONCLUSIONS OF LAW

1. The Respondent, Saginaw General Hospital, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and is a health care institution within the meaning of Section 2(14) of the Act.

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[3] The relevance under a discovery-type standard requires that ''a broad range of potentially useful information should be allowed the union for the purpose of effectuating the bargaining process.'' *Procter & Gamble Mfg. Co. v. NLRB*, 603 F.2d 1310, 1315 (8th Cir. 1979). Accord: *NLRB v. Pfizer, Inc*., 763 F.2d 887, 889–890 (7th Cir. 1985).

[4] In its brief, the Hospital claims that it made efforts to negotiate with the Union regarding the information requested by the latter. However, the record does not disclose anything more than the Hospital's counterrequests for ''records, notes, minutes, or otherwise'' of the grievant's meetings with the Union and the suggestion of an exchange. I find that under Board policy, the Hospital's suggestion of such an exchange as a precondition for compliance with the Union's request, was an unlawful refusal to provide the Union with Tribble's personnel file. See *American Meat Packing Corp.*, 301 NLRB 835 fn. 3 (1991).

2. The Union, United Food and Commercial Workers Union Local No. 876, United Food and Commercial Workers International Union, AFL–CIO–CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since August 30, 1991, the Union has been the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act for the following appropriate unit:

> All full-time and regular part-time skilled maintenance employees, including maintenance mechanics, electricians, refrigeration/plumbing employees, boiler operators, painters, HVAC technicians, cabinet makers, mechanical repair technicians, bio-medical technicians, and grounds maintenance employees employed by the Hospital at 1447 North Harrison Street, Saginaw, MI and at 5400 Mackinaw, Saginaw, MI; but excluding all office clerical employees, guards, and supervisors as defined in the Act, and all other employees.

4. By failing and refusing to furnish the Union with the complete personnel record of employee Dan Tribble, as requested in its letters of August 18, 1994 and January 3, 1995, respectively, the Hospital has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and 2(6) and (7) of the Act.

REMEDY

Having found that the Hospital has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Saginaw General Hospital, Saginaw, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with United Food and Commercial Workers Union Local No. 876, United Food and Commercial Workers International Union, AFL–CIO–CLC as the exclusive collective-bargaining representative of the employees in the following appropriate unit, by refusing to furnish the Union with the complete personnel file of employee Dan Tribble, and such other information as the Union may request, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining representative:

> All full-time and regular part-time skilled maintenance employees, including maintenance mechanics, electricians, refrigeration/plumbing employees, boiler operators, painters, HVAC technicians, cabinet makers, mechanical repair technicians, bio-medical technicians, and grounds maintenance employees employed by the Hospital at 1447 North Harrison Street, Saginaw, MI and at 5400 Mackinaw, Saginaw, MI; but excluding all office clerical employees, guards, and supervisors as defined in the Act, and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union the complete personnel file of employee Dan Tribble.

(b) Post at its facility, in Saginaw, Michigan, copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with United Food and Commercial Workers Union Local No. 876, United Food and Commercial Workers International Union, AFL–CIO–CLC as the exclusive collective-bargaining representative of our employees in the following appropriate unit, by refusing to furnish the Union with the complete personnel file of employee Dan Tribble, and such other information as the Union may request, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining representative:

All full-time and regular part-time skilled maintenance employees, including maintenance mechanics, electricians, refrigeration/plumbing employees, boiler operators, painters, HVAC technicians, cabinet makers, mechanical repair technicians, bio-medical technicians, and grounds maintenance employees employed by the Hospital at 1447 North Harrison Street, Saginaw, MI and at 5400 Mackinaw, Saginaw, MI; but excluding all office clerical employees, guards, and supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union the complete personnel file of employee Dan Tribble.

SAGINAW GENERAL HOSPITAL